



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.*

### **Introduction**

On September 05, 2012, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied to set aside a notice to end tenancy for cause. Despite making application, the tenant did not attend the hearing. The landlord attended the hearing and in the absence of the applicant, the Arbitrator dismissed the application without leave to reapply. The tenant has applied for a review of this decision.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

### **Issues**

Was the tenant unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control? Does the tenant have new and relevant evidence that was not available at the time of the hearing? Does the tenant have evidence that the Arbitrator's decision was obtained by fraud?

### **Facts and Analysis**

#### **Unable to Attend**

An arbitration hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not

intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

In her application for review on the grounds that she was unable to attend, the tenant states that she was home with chest pain. She also states that since rent and subletting to a co tenant were both accepted by the landlord and there were no problems or issues, she assumed that she did not need to attend the hearing to defend her case. The tenant has filed a hand written account of events starting August 14. On this day, the tenant states that the landlord verbally approved the co tenant and told the tenant that he would provide a letter of approval. On August 29, the tenant paid rent but had not received any correspondence from the landlord.

The next entry on this written log is September 06 which is after the hearing and states that no letter of approval of the co-tenant was received. The log goes on to document events that occurred up to September 19.

The tenant was served the notice to end tenancy on July 31, 2012 and applied for dispute resolution on August 03, 2012. As of the date of the hearing on September 05, the tenant had not received written confirmation of the landlord's verbal approval of the co tenant. One of the reasons for the notice to end tenancy was that the tenant had sublet the rental unit without the landlord's written consent.

The tenant has not filed any evidence to support the condition of her health on the day of the hearing.

Based on the reasons for not attending the hearing as stated in the application for review, I find that the tenant decided that the notice to end tenancy was set aside by the landlord and therefore there was no need for her to attend the hearing to dispute it. However, the tenant also states that she did not have any written confirmation from the landlord.

Based on the above, I find that the tenant made a wrong assumption that the notice had been set aside. Without any written confirmation of her verbal agreement with the landlord, it was her responsibility to attend the hearing to confirm the arrangement.. The tenant did not have any exceptional circumstances that prevented her from attending the hearing and therefore I find that the application for review on this ground must fail.

The application has not been considered on its merits.

**Decision**

**The decision made on September 05, 2012 stands.**

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 11, 2012.

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Residential Tenancy Branch